EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINA
Richmond Division

ePlus, Inc.,

Plaintiff,

versus 309 CV 620

Lawson Software, Inc.

Defendant

before: HONORABLE ROBERT E. PAYNE
Senior United States District Judge

August 10, 2010
Richmond, Virginia

Phone Conference

Gilbert F. Halasz, RMR
Official Court Reporter
U. S. Courthouse
Richmond, Virginia
(804) 916-2248

testimony that was proffered, and I have studied the report of Dr. Mangum. And I believe that there is a great difference between Mangum's report and the i4i, as Mr. McDonald pointed out. There was a firm and fixed and rationally-based bench mark that was really unavailable in the i4i case. Here the bench mark is really two litigation settlements. For reasons which make -- I understand that he articulated a reason, but I never did -- I found it quite difficult to understand. Dr. Mangum just threw out the other litigation-related settlements. He just picked the ones that had big numbers in them.

And the other three which he mentions in his report he excludes from his analysis. He concludes that the Verian, the Sciquest and Perfect Commerce agreements, which are also settlements that were arrived at, Verian was 500,000 plus 2.5 percent running royalty on all sales covered by the patents in suit in excess of 15 million in a calendar year. Sciquest was a 2.4 million-dollar settlement. Perfect Commerce, according to him, was a lump sum payment of $750,000. And his basis for

throwing those out was not an economic basis. His basis for throwing them out was a conclusory ipse dixit pronouncement. And it is that he understood no discovery had occurred, and it was that he understood that due to quick settlements ePlus did not receive information that would allow it to form an understanding as to the amount of accused revenue for any of these parties. As a result, he says, the terms of the agreements do not represent a complete valuation of the specific use of the patents in suit, but rather based on avoidance of litigation. He also -- he says the most that can be said out of those is they provide evidence of the willingness by ePlus to enter into fixed payment and running royalty license agreements. So out of five possible settlement agreements that he could have chosen to include in his base he threw out for non economic reasons the three lowest.

There is nothing that I know of that permits an expert to pick and chose in selecting the base in this fashion.

Now, the other thing is the base itself of those that were selected are shaky under the

law. It's true that there are cases that allow settlement agreements and licenses and payments used in settlement agreements, or that come from settlement agreements, to be used in assessing the reasonableness of the royalty. But beginning a hundred years ago in Rude against Westcott the Supreme Court cautioned against the use of those and commented how unreliable they basically would be. Subsequent cases from all of the circuits, including the federal circuits, counsels against the use of these kinds of agreements.

But there are other cases that say they can be used in certain circumstances. The fundamental message being they are of minimal probative value in arriving at a determination of a reasonable royalty.

In particular, the federal circuit has held that lump sum settlement agreements are particularly unsuited to use as a bench mark for the calculation of running royalty agreements.

Now, I am aware of the Rescue case and the two cases in Texas that make the comment that Rescue changes the nature of the analysis.

There are a number of cases in Texas in the same district that hold -- and in other districts -- that hold that Rescue doesn't change the fundamental analysis established by the law of the previous federal circuit and other cases.

In my judgment the conclusion that Rescue changes the law is an unwarranted one. I do not believe that it does. I don't think the issue presented in Rescue is the same issue that is presented here. And I think that it is giving Rescue far too much credence to interpret it as changing the basic results by which we determine whether license agreements under, excuse me, arrived at under settlement agreements are a good way to calculate running royalties. Nonetheless, I think we do have to recognize that the general body of law, confused though it may be, tends to allow the use of lump sum payments out of settlement agreements in certain circumstances. Or, excuse me, the use of royalty provisions out of settlement agreements in calculating reasonable royalties. But I am -- but when you add the fact that these are lump sum royalty, I mean

lump sum payments for the most part that in fact have been converted by this man, Mangum, into running royalty rates, and you consider that the base he used is in every instance an assumed base for the quantum of sales in positing his analysis, and then you consider at the same time that for no valid economic reason that can be ascertained from the face of his report that he has thrown out three out of five settlement agreements; and when you consider that ePlus itself valued these rights at a far lesser figure then one has to but conclude that the bench mark constructed by this expert bears virtually no resemblance to the bench mark constructed by the expert used by the expert in i4i. So I agree that while litigation settlements have minimum probative value, they can be considered. But in the facts of this case, the way he went about it, it establishes a very shaky bench mark against which to start his calculations, and the predicate settlements also suffer from that, from the defect that are not generally probative under Lucent, that is, lump sum settlements are not generally probative under Lucent of a reasonable royalty.

Further, I have been back and studied how it is that this expert took a range of 2.5 to 3.7 and got it to 5.6. That is a basic doubling -- excuse me -- to a range of 5 to 6. That is essentially a doubling of the royalty rate. He does it by saying that certain of the factors of Georgia Pacific effectuate an increase, certain factors are neutral, without explaining what part of which one of those factors accounts for a doubling or a significant increase, nor does he explain how he factors in the aggregate to actually achieve an increase. He just makes a bunch of general statements about each of the factors, concludes that it is either statistically neutral or indicating a higher royalty rate. He doesn't say it requires arrival at a higher royalty rate in every case. He says it indicates or suggests, thereby indicating to me a considerable speculation.

What that all boils down to when you look at his factors, I think it is 5 and 6, and then 8313 is this. That is the quintessential definition of an ipse dixit. 2.5 to 3.7 goes

to a range of 5 to 6 because I say so. And I am an expert. And that is exactly what he has done. And that is a methodology flaw, not a disagreement with his facts. That is just a methodology flaw that renders his analysis such as to be sufficiently unreliable that it will not be healthy -- help the finder of the fact determine an issue or understand the evidence or to determine a fact in issue. And, in fact, it posits a very real risk of the very threat that is presented by having or allowing experts to posit ipse dixit statements.

You get a person with a big credential who comes in well dressed, is impressive, says it is so because I say so, and the jury is confused and apt to be -- and apt to be impressed by the credential rather than the analytical method. And rule 403, which Daubert says has to be applied in applying it, or has to be considered in applying rule 702, says that that kind of evidence is to be kept out.

So I view this as certainly not -- I don't think it is The Court's job to make the judgment about whether, about the factual underpinnings or the validity val non of the

conclusions. I know it is not. We have been taught to do this, to take that approach since, at least since Daubert, if not before. But certainly since Daubert. That is the approach of taking in this circuit, and drummed in to the heads of all district judges in every case that is decided on this issue. And it is the methodology that is flawed. I don't address the conclusions. For those reasons the motion number 3 will be granted, and the motion number 1 and 2, therefore, are denied as moot.

I believe that solves, or that deals and takes care of those motions; is that right? Is there anything left? Is there anything left?

MR. McDONALD: Well, settlement agreements themselves, Your Honor, are subject of a motion in limine number one. Not sure by saying it is moot are you saying the expert is the only way that would come in? They are not coming in any way? If that is right, we are fine. But if that is leaving the door open to those being somehow presented to the jury and those million dollar numbers getting in front of the jury we still would want that motion decided and granted as well.

THE COURT: I think they ought to be able to wear tee shirts that have "37 million" on them, and walk in the door and say that we got that in another case, so why don't you give it to us here? Don't you think that would be a good result? Come on, Mr. McDonald, of course there is some way that perhaps this could come in, this information could come in, other than through Mr. Mangum that I don't understand. Mr. McDonald? That I don't know.

MR. McDONALD: Sorry. I think that is a question for Mr. Robertson.

THE COURT: Well, you were the one who anticipated it. So I was thinking maybe there was something that is in the history of the case that had intimated it and beyond my kin.

MR. McDONALD: My recollection is their opposition to motion number one was based on a use by Mr. Mangum in the damages reports. But I am not going to say a hundred percent sure. I think that was certainly the focus. I am confident of that.

THE COURT: All right.

Mr. Robertson, is there any basis for those settlement agreements to come in other

than through the Mangum analysis?

MR. ROBERTSON: Yes, Your Honor, there is. Let me be specific. I don't think settlement agreements per se need to come in. But there are two contentions made by Lawson in this case. One is that the patents are, the claims at issue are obvious; and the secondary factors for non obviousness include commercial success and licensing.

And we should be able to introduce under those factors -- and we always have in these cases been able to introduce the fact that we have licensed others, and that we had commercial success, particularly if someone is going to come out and parade the $12,000 number that says that the context is known about, that that is the value of patents, when the patent actually now achieved close to $60 million in royalties.

Secondly, Your Honor, Lawson has a latches defense that says we didn't sue soon enough and therefore we should recover nothing. One of the recognized ways to rebut a latches defense is to show that you are out enforcing your patents against others. You don't have to sue

everybody all the time right away.

You know, we are a company of limited resources. So part of the evidence could be that if Lawson is going to persist in this latches defense, if that is it, that we were out enforcing our patents against --

THE COURT: Mr. McDonald, wait a minute. Are you asserting that they are in latches or that that there is a latches defense?

MR. McDONALD: There is a latches defense.

THE COURT: You understand the difference?

MR. McDONALD: I am not sure if I appreciate the question. Sorry.

THE COURT: In latches is an equitable concept. And you are in latches because of certain conduct you have engaged in. Latches in a patent context is just -- is more along the line of what Mr. Robertson is talking about. You didn't sue soon enough.

Are you talking about latches in the patent sense or in the equitable sense?

MR. McDONALD: In the patent case sense, Your Honor.

THE COURT: All right.

MR. McDONALD: There is a case that deals